ests, of its mining interests, of its educational institutions, and they invariably constitute a majority of the law-making power, and we are surprised to have a lawyer government in all its parts, and that our criminal laws and methods are defective in suppressing and punishing crime as it should be punished with the 'self-defense' plea worked to a frazzle that the criminal may escape just punishment for the deed committed.

"And yet *The Statesman* has no grievance to air against the lawyers as a distinct class. The great majority of them are good citizens and patriotic, who have the welfare of the state first in their affections, who give conscientious service to their clients and who would serve the state with equal fidelity were they called to this post of honor. It is not the lawyer, but the system that is at fault, and the thing to do is to reform the system." J. W. G.

Prof. Pound on Reform in Procedure.—In a letter published in a recent number of the *Central Law Journal* Prof. Roscue Pound makes the following observations on the subject of procedural reform:

"Recently a judge of one of the circuit courts of Illinois said soberly, in print, that 'Illinois has as fine a system of pleading as ever existed or as does exist today on the globe.' Perhaps the word 'fine' may need definition. But if he meant that Illinois pleading is as effective an instrument for the administration of justice as any that exists, such belief on the part of a judge argues a most unhappy ignorance of what the reports and books of practice disclose to any one who will read them.

"In a recent discussion before a bar association a justice of a state supreme court argued a satisfactory system in his own state from the number of cases the court 'disposed of' annually. When we look at the last volume of the reported decisions of that court, however, we find that twenty-four of the causes reported therein were so decided that they must be tried over again. In the volume in question, twenty-two new trials are granted in actions at law, one equity cause is sent back for further proceedings, and one suit in equity is dismissed after decree because the plaintiff should have proceeded at law. In the latter the plaintiff must now begin anew in the same court, must try the same cause once more to the same tribunal, on the same facts, but on new paper! In the twenty-two actions at law referred to three new trials of the whole cause are granted because of errors in the damages; three are granted because of the arguments of counsel; in one the diculty, as stated, is that a court of law may not reform a written instrument. But observe: In that state the same court has jurisdiction at law and in equity. Hence the difficulty is that another proceeding was required, and must now go on, in the same court, collateral to the proceeding in which the new trial was granted. In that proceeding the same facts will appear and the same result will be reached as in the proceedings set aside. Causes so decided are not 'disposed of.' Had the learned justice been familiar with the practice in more than one jurisdiction which has outgrown the stage of procedure represented by these causes, he might have felt less satisfaction.

"Above all things, there is need for more widespread knowledge of what has been done to modernize procedure. There should be more information as to what has been done and is doing to make procedure serve the ends of substantive law and of justice. Too much of our American discussion has been a *priori*. Too much assumes that knowledge of the local practice is a sufficient

qualification for fixed opinions. If you can excite interest in bench and bar in what has been achieved at home and abroad, and induce the profession to investigate what reforms in procedure have done and hence may do elsewhere, instead of harping forever on the monstrosity which over-minute legislation has produced in New York, you will have rendered a service." J. W. G.

Governor Gilchrist on the Law's Delays.—Governor A. W. Gilchrist of Florida gives a leading place in his last annual message to the legislature to a discussion of the causes and remedies for the law's delay. After reviewing the English practice and calling attention to the recommendations of the American Bar Association with regard to reversals for harmless errors, he goes on to say:

"Under our laws, if an attorney so desires, it is almost impossible to secure final judgment in less than seven or eight months from the date of the conviction. In case of a death sentence, all that is necessary is for the attorney to take exceptions. Exceptions being overruled, sixty to ninety days are allowed in which to prepare a bill of exceptions. At the end of such time no writ of error is sued out. The Governor issues the death warrant, returnable within a reasonable time, say, three or four weeks. Just before the date of execution a writ of error is sued out as a 'matter of right.' This writ is returnable to the supreme court at its next term, 'unless the first day of said next term shall be less than thirty days from the date of the writ, when it shall be returnable to a day in said next succeeding term, more than thirty days and not more than fifty days from the date of the writ.' Then the attorney-general has thirty days in which to make reply. Then the attorney for the defendant has twenty days. If the supreme court is ready to hear the case at once, it thus takes seven or eight months at the shortest time to hear any such case. Suppose the writ of error is taken out at the beginning of a term, returnable to the next term, six months distant. It thus appears that fully eleven or twelve months may be necessary in order to hear the case. In the event the case should be reversed on a point of law, by the time the case is tried again the witnesses who have testified as to facts have died or moved away or have forgotten. The facts in the case, as well as the law, are at issue in the next trial. Then, according to 'due process of law,' not on account of 'right and justice,' but for some error for which the attorney is responsible, another long-drawn-out trial is obtained, involving not only questions of fact, but questions of law. If a verdict of guilty is again obtained, it goes before the supreme court again.

Speaking of the attitude of the Supreme Court of Florida toward technicalities, he says: "I could get up enough data for a pretty good-sized book showing decisions by which 'due process of law' has run rough-shod over 'right and justice.' Among the cases cited by him in illustration are the two following:

"In *Mobley v. State*, 57 Fla. 22, defendant was convicted in the trial court of the larceny of a cow. The supreme court reversed the judgment of the lower court and awarded defendant a new trial on the ground that the information charged the defendant with stealing a *cow*, on a certain day, from H. T. Lykes, while the evidence introduced at the trial showed that the defendant, on the same day, stole a *steer* from the said Lykes. This was held by the supreme court to be a fatal variance between the allegations in the information and the proof on which the verdict of guilty was obtained. Had this steer proved to be a bull, there is no telling what effect it would have had upon determining the decision of the court.